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12/5/2017

Teresa Young, Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 10 (ORC-113)
1200 Sixth Avenue, Suite 900
Seattle, Washington 98101-3140

**RE: ICL Comments re docket number CWA-10-2018-0205, City of Driggs
WWTP Consent Agreement.**

Since 1973, the Idaho Conservation League has been Idaho's leading voice for clean water, clean air and wilderness—values that are the foundation for Idaho's extraordinary quality of life. The Idaho Conservation League works to protect these values through public education, outreach, advocacy and policy development. As Idaho's largest state-based conservation organization, we represent over 30,000 supporters, many of whom rely on clean, plentiful water for domestic use, industrial use, irrigation and recreation and have a deep personal interest in protecting Idaho's rivers from contamination.

The past and ongoing Clean Water Act violations related to the operation of the City of Driggs' Wastewater Treatment Plant (WWTP) are of particular concern. We have reviewed the proposed Consent Agreement between the EPA and the City of Driggs related to this matter and provide the following comments.

Compliance Schedule

The proposed Consent Agreement does not include any sort of timeframe or compliance schedule directing when and how the WWTP will get into compliance with the NPDES permit limits. As such the Consent Agreement is fatally flawed.

The Consent Agreement must be re-drafted to provide a compliance schedule with a final date by which the WWTP will come into compliance and also provide numerous midcourse check in points with deliverables to demonstrate that the WWTP is on course to achieve compliance by a date certain. Given the challenges that this facility has had over the years with getting into compliance, these mid course check ins are critical to guaranteeing success.

ICL Comments re docket number CWA-10-2018-0205, City of Driggs WWTP Consent Agreement.

We hold that the date for final compliance should be no more than 18 months from the effective date of any finalized Consent Agreement.

Additional Penalties for Failure to Achieve Compliance by Date Certain

Additionally, the proposed Consent Agreement lacks provisions that stipulate mandatory penalty payments in the event that final compliance is not achieved by a date certain or that the facility fails to meet the requirements articulated as part of a mid course check in.

Provisions regarding additional penalties for such non-compliance should be included and should stipulate that automatic penalties of no less than \$1,000 per violation should be levied.

Penalty Provisions are Insufficient

In light of the many years that this facility has been violating its NPDES permit limits (since November of 2012), the staggering number of violations (3,722 and still accruing) and the significance of many of the violations, the penalty amount (\$13,500) is scandalously inadequate.

The penalty amount is a mere \$3.63 per violation. Such a low penalty amount actually undermines the Clean Water Act. If dischargers thought that they would only be held accountable for \$3.63 per violation, many dischargers might rationally decide to not bother with making necessary investments in operations and upgrades. Why bother stay in compliance if the penalty does not even amount to a slap on the wrist?

An EPA document entitled "INTERIM CLEAN WATER ACT SETTLEMENT PENALTY POLICY" (henceforth, "Penalty Policy") dated March 1, 1995, provides meaningful insight regarding penalties.

Section two of the Penalty Policy provides:

II. PURPOSE

The purpose of this Policy is to further four important environmental goals. First, penalties should be large enough to deter noncompliance. Second, penalties should help ensure a level playing field by ensuring that violators do not obtain an economic advantage over their competitors. These two goals generally require that penalties recover the economic benefit of noncompliance, plus an appropriate gravity amount. Third, CWA penalties should be generally consistent across the country. This is desirable as it not only prevents the creation of "pollution havens" in different parts of the nation, but also provides fair and equitable treatment to the regulated community wherever they may operate. Fourth, settlement penalties

should be based on a logical calculation methodology to promote swift resolution of enforcement actions and the underlying violations.

The Penalty Policy specifically states that it “applies to civil judicial and administrative penalties sought under the CWA Section 309, including violations of NPDES permit limits and conditions.” As such, it is germane to this proposed Consent Agreement.

While it is the case that there is significant agency discretion afforded EPA while settling enforcement matters, the exceedingly small penalties levied in this matter stray well beyond the acceptable and fundamentally violate the first “purpose” of the Penalty Policy: “penalties should be large enough to deter noncompliance.”

Please do not hesitate to contact me at 208-345-6933 ext. 24 or jhayes@idahoconservation.org if you have any questions regarding our comments on this.

Sincerely,



Justin Hayes
Program Director

cc: David Domingo, EPA Region 10